

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.1970 OF 2008

**SATISH
RAMCHANDRA
SANGAR**

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|----|--|---|------------------------------|
| 1. | Shri.Prakash Dattatray Jawheri, |] | |
| | Aged about 51 years, Occupation : Nil, |] | |
| | (Father of the Deceased) |] | |
| | |] | |
| 2. | Smt.Pramila Prakash Jawheri, |] | |
| | Aged about 48 years, Mother of the |] | |
| | deceased, both are residing at Patkar |] | |
| | Niwas, Pada No.1, Near Hanuman |] | ...Appellants |
| | Temple, Vartak Nagar, Thane. |] | (Original Applicants) |

Versus

- | | | | |
|----|--|---|-------------------------|
| 1. | Shri.Baliram Kathod Madhvi, |] | |
| | Own House, Diva Koliwada, |] | |
| | Navi Mumbai, District : Thane. |] | ...Opponent No.1 |
| | |] | |
| 2. | The United India Insurance Company |] | |
| | Ltd., Mumbai Regional Office No.I, |] | |
| | 5 th Floor, Stadium House, Veer Nariman |] | ...Opponent No.2 |
| | Road, Churchgate, Mumbai : 400020. |] | (Respondents) |

Mr.T.J.Mendon:-	Advocate for Appellants/Original Applicants.
Mr.Chandrakant Chavan:-	Advocate for Respondent No.2– Insurance Company.

CORAM : S. M. MODAK, J.

DATE : 19th AUGUST 2026

ORAL JUDGMENT :-

1. Heard learned Advocate Shri.Mendon for the Appellants/ Claimants and learned Advocate Shri.Chavan for Respondent No.2– Insurer.

2. **This is an Appeal for enhancement.**

3. The deceased Pravin was driving a motorcycle and a pillion rider is his friend Nilesh. One tempo owned by the Respondent No.1– insured by Respondent No.2 came from the opposite direction in high speed and went on wrong side and dashed the motorcycle. The deceased fell on the ground and sustained head injuries. He died on the spot. There is an offence registered against the driver of the tempo.

4. The Appellant No.1 is the father and the Appellant No.2 is the mother of the deceased. They applied before the Motor Accident Claims Tribunal–Thane (“**Tribunal**”). The owner of the tempo has not contested the proceeding. It is only contested by the Insurer. The allegations were denied. They have not examined any witness. The Tribunal has directed the Insurer and Insured to pay a compensation of Rs.5,07,000/- (Rupees Five Lakh Seven Thousand) along with the other benefits. This is inadequate is the case put forth by Mr.Mendon.

He made following submissions:-

- (a) The Tribunal has committed an error in considering the part time salary. The Tribunal was wrong in disbelieving the salary certificate at Exhibit-30 only on wrong notion. The witness Balaram Ganpat Deshmukh was not aware of the contents.
- (b) The Tribunal has committed wrong in considering the multiplier of 10. It ought to have been 18 as per the judgment in case of *Smt.Sarla Verma and Ors. V/s. Delhi Transport Corporation and Anr.*¹
- (c) The deceased was born on 14th October 1978 and the date of accident is 7th April 2004. Even though his age was 25 years and 5 months, his age ought to have been considered is 25 as per the observations in *New India Assurance Co. Ltd. V/s. Alpa Rajesh Shah and others*². The only completed age has to be considered and if 25 years is considered, then multiplier will be 18.
- (d) The benefits as per *Smt.Sarla Verma's* case ought to be granted.

5. Learned Advocate Mr.Chavan has supported the judgment and prayed that no interference is required. According to him, if the witness Balaram Deshmukh is not aware about the contents of the certificate, then the Tribunal has committed no wrong in not considering the part time salary. He invited my attention to ground No.(e) from the memo of Appeal wherein the Appellants have requested to consider the multiplier of 16 and now he cannot pray for 18 as a multiplier.

1 AIR 2009 Supreme Court 3104

2 2014 ACJ 1747

6. I have read the observations in paragraph Nos.19 and 20. The deceased was having income from two sources. They are as follows:-

- (a) The salary income of Rs.6,227.35 (Rupees Six Thousand Two Hundred Twenty Seven and Thirty Five Paisa) while working in Dragger Forst Tolls Ltd.
- (b) He was doing a part time job with Hawaii Industries and earning Rs.3,000/- (Rupees Three Thousand) per month. The witness Balaram Deshmukh is examined.

7. The Tribunal has considered Rs.6,227.35 (Rupees Six Thousand Two Hundred Twenty Seven and Thirty Five Paisa) from the salary. While discarding the part time salary of Rs.3,000/- (Rupees Three Thousand), the Tribunal has observed *the witness is not having a personal knowledge about the contents of the certificate at Exhibit-30*. While differentiating the observations of one judgment, in paragraph No.20, the learned Member observed *the facts were different and Balaram Deshmukh was not author of that certificate*. The Tribunal observed *Balaram Deshmukh was not having personal knowledge regarding the contents thereof*. Whereas, according to Mr.Mendon, the Respondents have not challenged that certificate being forged and fabricated. I have read his evidence.

8. The deceased Pravin was working as part time worker in Hawai Industries whereas, the witness Balaram Deshmukh was a production supervisor. The timing of the deceased was from 6.00 p.m. to 9.30 p.m. One Vasudev is the owner of Hawai Industries. The pay certificate is signed by the said Vasudev. The witness Balaram was authorized by the owner to depose in the Court and the authority letter is at Exhibit-31. During the course of the cross-examination, the witness has answered that *he is not aware anything about the employees and their pay. He has answered that he is not having personal knowledge about the contents of the salary certificate. Except the pay certificate, he is not having any documentary evidence to show that the deceased was their employee.*

9. It is true, no suggestions were given that the certificate dated 1st June 2004 at Exhibit-30 is forged and fabricated. No suggestion is given that the owner has not signed that certificate. In fact, the witness Deshmukh was authorized by the owner to give evidence before the Tribunal. When such authorization is there, the witness has produced the certificate issued by the owner. It can very well be said that this has come from the proper custody. When it has come from the proper custody and there is no suggestion that it is forged and fabricated, the

Tribunal has committed an error in discarding it. The witness has examined for producing the document. The witness may not be aware about the contents of the documents. But when he was authorized to produce it, the Tribunal ought to have accepted it. **It is a settled law that in any claim petition, strict proof is not required.** So, the Tribunal ought to have considered the part time salary to the tune of Rs.3,000/- per month.

10. At the same time, the Tribunal ought to have considered the multiplier as 18 instead of the multiplier as 10. It is for two reasons. As per *Smt.Sarla Verma's* case, if the age of the deceased is 25, it ought to have been 18. The deceased has not completed the age of 26 years as observed in *Alpa Rajesh Shah's* case. The earlier age has to be considered. Merely because in the memo of Appeal, the multiplier 16 is mentioned, it does not mean that at the time of argument, the Appellant cannot rely upon the observations of Supreme Court which is the law of the land. The deceased was survived by two parents. So, the deduction towards the *personal expenses* ought to have been one half and not one third done by the Tribunal. That correction is required. The benefits as per the subsequent judgment has to be granted.

11. In view of that, the compensation is recalculated as follows:-

<u>Sr.No.</u>	<u>Heads</u>	<u>Compensation Awarded/Stepped up</u>
(i)	Monthly Income:-	Rs.9,227/-
(ii)	Future Prospects:-	Rs.4,613/- (50% of the Income)
(iii)	Deduction towards Personal Expenditure and Dependency:-	Rs.6,920/- (1/2 nd of Rs.13,840/-).
(iv)	Multiplier:-	Rs.14,94,774/- (Rs.6,920/-x12x18).
(vi)	Funeral Expenses:-	Rs.18,000/-
(vii)	Loss of Estate:-	Rs.18,000/-
(viii)	Loss of Consortium:-	Rs.96,000/- (Rs.48,000/- per head)
(a)	Total Compensation Awarded:-	Rs.16,62,774/-
(b)	Compensation awarded by the Tribunal:-	Rs.5,07,000/-
(c)	Claim:-	<u>Rs.11,55,774/-</u>
	Amount to be paid now:-	<u>Rs.11,55,774/-</u> along with 7.5% interest.

12. In view of the above discussion, following order is passed:-

-: ORDER :-

- (a) **The Appeal is allowed.**
- (b) The Award dated 21st June 2008 passed by the Motor Accident Claims Tribunal–Thane is modified as follows:-
- (i) **The Respondents are directed to pay jointly and severally a compensation of Rs.16,62,774/- (Rupees**

Sixteen Lakh Sixty Two Thousand Seven Hundred Seventy Four) (now the Appellants will be entitled to get only Rs.11,55,774/- (Rupees Eleven Lakh Fifty Five Thousand Seven Hundred Seventy Four)). The Respondents to pay the deficit on original amount awarded.

- (ii) The Respondents are directed to pay this amount within a period of 8 weeks. The Tribunal has granted interest of 7.5% per annum from the date of petition till its realization. The Respondents are directed to pay 7.5% interest on the amount of Rs.11,55,774/- (Rupees Eleven Lakh Fifty Five Thousand Seven Hundred Seventy Four).
- (iii) Additional Court Fee be paid.

13. In the light of the above observations, **the Appeal stands disposed of.**

[S. M. MODAK, J.]